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Message Text

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INFO OCT-01 EA-09 ISO-00 JUSE-00 TRSE-00 EB-07 /020 R

DRAFTED BY L/M:KEMALMBORG:MAB
APPROVED BY L/M:KEMALMBORG
JUSTICE - MR. ANDREW VANCE (SUBS)
---------- 086572
R 262035Z AUG 75
FM SECSTATE WASHDC
TO AMEMBASSY TOKYO

UNCLAS STATE 202954

E.O. 11652: N/A
TAGS: PFOR, CPRS, JA
SUBJECT: MITSUI AND CO. (USA) INC. V. UNITED STATES

REF: TOKYO 9007

1. JUSTICE DEPARTMENT HAS SUPPLIED ADDITIONAL INFORMATION REQUESTED REFTEL.

2. TEXT OF JUSTICE LETTER IS AS FOLLOWS:

"THIS IS TO ADVISE YOU THAT THE INSTANT ACTIONS ARE CIVIL IN NATURE, AND CONCERN THE ULTIMATE CUSTOMS DUTY LIABILITY OF A DOMESTIC IMPORTING CORPORATION. THE ACTIONS RAISE AN ISSUE WHICH HAS BEEN DEVELOPING FOR MANY YEARS CONCERNING THE BASIS FOR THE CUSTOMS VALUATION OF A WIDE VARIETY OF GOODS ALLEGEDLY SOLD FROM MITSUI-JAPAN TO MITSUI-U.S.A. SEE 19 U.S.C. 1401A. PLAINTIFF, THE IMPORTER OF RECORD HEREIN, HAS REQUESTED AN EVIDENTIARY HEARING, PURSUANT TO 28 U.S.C. 256, TO PRESENT ORAL TESTIMONY FROM JAPANESE MANUFACTURERS TO THE CUSTOMS COURT, TO SUBSTANTIATE PLAINTIFF'S CLAIMS FOR LOWER DUTIABLE VALUES ON SUCH IMPORTATIONS. THE WITNESSES WILL VOLUN-
TARILY APPEAR ON BEHALF OF THE IMPORTER IN AN EFFORT TO ESTABLISH PLAINTIFF'S CLAIMS, AND NO ATTEMPT WILL BE MADE TO EXERCISE SUBPOENA POWER.
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"THE PRESENCE OF A CUSTOMS COURT JUDGE IS REQUIRED

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006

SO THAT THE COURT CAN PRESIDE OVER THE PROCEEDING IN GENERAL, WILL HAVE AN OPPORTUNITY TO MAKE EVIDENTIARY RULINGS FROM THE BENCH, AND OBSERVE THE DEMEANOR OF EACH WITNESS. A COMMISSION WILL NOT SATISFY THESE REQUIREMENTS.

"IT IS ANTICIPATED THAT THE CUSTOMS COURT JUDGE WILL BE ACCOMPANIED BY A COURT REPORTER AND A DEPUTY CLERK OF THE COURT, ALTHOUGH THE COURT WILL HAVE TO SPEAK DIRECTLY...ON THAT SUBJECT.

"WE ARE ALSO UNABLE TO STATE AT THIS TIME HOW MANY WITNESSES PLAINTIFF WILL PRODUCE. WE ESTIMATE THAT THE HEARING WILL TAKE THREE WEEKS, WITH THE COURT REQUESTED TO SIT IN THE CONSULAR OFFICE IN OSAKA AND IN THE EMBASSY IN TOKYO. WE WILL BE IN A BETTER POSITION TO FURNISH YOU WITH THE REQUESTED INFORMATION AS THE HEARING DATE COMES CLOSER. WE DO NOT HAVE A TENTATIVE DATE SET, HOWEVER, BECAUSE WE HAVE DECIDED NOT TO CONSENT TO A HEARING IN JAPAN PENDING YOUR ADVICE AND PENDING OTHER PRE-REQUISITES. SEE RULE 2.2(B)(3), RULES OF THE UNITED STATES CUSTOMS COURT....

WE ARE HOPEFUL THAT THE FOREGOING IS SUFFICIENT FOR YOU TO SUBMIT A FORMAL NOTE VERBALE REQUESTING APPROVAL FOR THE EVIDENTIARY HEARING WHICH WILL LEAD TO AN INFORMAL UNDERSTANDING BETWEEN OUR GOVERNMENTS AS TO THE METHOD OF PROCEDURE IN THIS MATTER. PLEASE DO NOT HESITATE TO CONTACT THIS OFFICE IF YOU HAVE ANY FURTHER QUESTIONS." INGERSOLL

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Margaret P. Grafeld
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US Department of State
EO Systematic Review
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